

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

RICHARD OWENS, ) 1:12-cv-00154-SKO-HC  
Petitioner, )  
 ) ORDER DENYING PETITIONER'S MOTION  
 ) FOR AN INJUNCTION (DOC. 7)  
 )  
 v. )  
 )  
 WARDEN DONNELLY, )  
 Respondent. )  
 )

Petitioner is a state prisoner proceeding pro se and in forma pauperis with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Pursuant to 28 U.S.C. § 636(c)(1), Petitioner has consented to the jurisdiction of the United States Magistrate Judge to conduct all further proceedings in the case, including the entry of final judgment, by manifesting consent in a signed writing filed by Petitioner on February 9, 2012 (doc. 5). Pending before the Court is Petitioner's motion for an injunction, which was filed on March 8, 2012.

## I. Background

Petitioner, who alleged that he was incarcerated at the California State Prison at Los Angeles, filed a petition on

1 February 2, 2012, alleging violations of his constitutional  
2 rights in connection with his Kings County trial on a charge of  
3 violating Cal. Pen. Code § 4501. (Pet. 1.) On February 21, 2012,  
4 the Court issued an order to Petitioner to show cause why the  
5 petition should not be dismissed for Petitioner's failure to  
6 exhaust state court remedies as to one of his claims.

7       II. The Motion for Injunctive Relief

8       In his motion, Petitioner alleges that he has been subjected  
9 to harassment by custodial staff, such as putting unspecified  
10 "stuff" in Petitioner's food and water, not allowing him to  
11 receive incoming mail other than legal mail, and placing him in  
12 administrative segregation. (Mot. 1.) Petitioner attaches to  
13 his motion a program review form from November 2011, which  
14 pertains to Petitioner's housing and appears to reflect that he  
15 was to stay thirty days in administrative segregation pending  
16 completion of closure documentation, and was then to be double  
17 celled. Petitioner seeks an order to transfer Petitioner to a  
18 safe environment and to be placed into protective custody pending  
19 transfer.

20       With respect to Petitioner's motion for injunctive relief,  
21 it is clear that Petitioner is challenging the conditions of his  
22 confinement, not the fact or duration of that confinement.

23       It is established that relief by way of a writ of habeas  
24 corpus pursuant to 28 U.S.C. § 2241 extends to a prisoner who  
25 shows that the custody violates the Constitution, laws, or  
26 treaties of the United States. 28 U.S.C. § 2241(c)(3). A habeas  
27 corpus petition is the correct method for a prisoner to challenge  
28 the legality or duration of his confinement. Badea v. Cox, 931

1 F.2d 573, 574 (9th Cir. 1991) (quoting Preiser v. Rodriguez, 411  
2 U.S. 475, 485 (1973)); advisory committee note to Rule 1 of the  
3 Rules Governing Section 2254 Cases (Habeas Rules), 1976 adoption.

4 In contrast, a civil rights action pursuant to 42 U.S.C.  
5 § 1983 is the proper method for a prisoner to challenge the  
6 conditions of that confinement. McCarthy v. Bronson, 500 U.S.  
7 136, 141-42 (1991); Preiser, 411 U.S. at 499; Badea, 931 F.2d at  
8 574; advisory committee note to Habeas Rule 1, 1976 adoption.

9 Because Petitioner seeks to challenge the conditions of his  
10 confinement, and not the legality or duration of his confinement,  
11 these particular claims are cognizable in a civil rights action  
12 rather than a petition for writ of habeas corpus. Accordingly,  
13 the motion for injunctive relief is DENIED.

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15 IT IS SO ORDERED.

16 Dated: March 20, 2012

17 /s/ Sheila K. Oberto  
UNITED STATES MAGISTRATE JUDGE

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